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5 Attorneys for Nugget Construction Co.,
6 Inc., and USF&G, Defendants

7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF ALASKA AT ANCHORAGE

9 UNITED STATES OF AMERICA for the
10 use of NORTH STAR TERMINAL &
11 STEVEDORE COMPANY, d/b/a NORTHERN
12 STEVEDORING & HANDLING, and NORTH
STAR TERMINAL & STEVEDORE COMPANY,
d/b/a Northern Stevedoring &
Handling, on its own behalf,

13 Plaintiffs,

14 and

15 UNITED STATES OF AMERICA for the
16 use of SHORESIDE PETROLEUM, INC.,
17 d/b/a Marathon Fuel Service, and
18 SHORESIDE PETROLEUM, INC., d/b/a
Marathon Fuel Service, on its own
behalf,

19 Intervening Plaintiffs,

20 and

21 METCO, INC.,

22 Intervening Plaintiff,

23 vs.

24 NUGGET CONSTRUCTION, INC.; SPENCER
25 ROCK PRODUCTS, INC.; UNITED
STATES FIDELITY AND GUARANTY
COMPANY; and ROBERT A. LAPORE,

Defendants.

No. A98-009 CIV (TMB)

NUGGET'S REPLY IN
SUPPORT OF MOTION
IN LIMINE RESPECTING
PUNITIVE DAMAGES CLAIMS

I. INTRODUCTION

In support of its Motion in Limine Respecting Punitive Damages Claims, Nugget Construction Company ("Nugget") hereby replies to North Star's Limited Opposition to Nugget's Motion in Limine Respecting Punitive Damages Claims. North Star concurs that evidence of Nugget's financial condition is not relevant to determining liability for punitive damages, but contends that it may be admitted for other relevant purposes. However, North Star does not answer the question: to what other purposes such evidence may be relevant as to the question of liability? Absent some other legitimate purpose, North Star should not be allowed to present evidence of Nugget's financial position during the liability phase of this trial, as it would be highly prejudicial to Nugget to allow the jury to have that information during its liability deliberations. If North Star believes such evidence is critical to establish the amount of punitive damages to be awarded, that question should be bifurcated and determined only if the jury finds in favor of North Star on this issue. Otherwise, the court should grant the motion and enter an order excluding evidence of Nugget's financial condition from the trial.

II. ARGUMENT

North Star acknowledges that it is "accurate that the evidence of Nugget's financial condition may not be relevant to determine liability for punitive damages." North Star's Opposition at 2. North Star goes on to argue that "[e]vidence of financial interest or condition can be admitted if relevant for purposes other than punitive damages liability." *Id.* at 3, relying on *Sever v. Alaska Pulp Corporation*, 931 P.2d 354 (Alaska 1996).

While it is true that in *Sever* the court held that such evidence "[would] be admitted, if relevant," *Id.* at 361, it gave no examples of a purpose for which it would be

1 relevant, other than determining the amount of a punitive damages award. Moreover,
2 North Star fails to articulate any basis under which Nugget's financial status is relevant.
3 Therefore, the only purpose for introducing it prior to a determination of liability for
4 punitive damages would be to improperly influence the jury's determination of liability.

5 More importantly, *Sever* demonstrates that the trial court, under the punitive
6 damages standard applicable to this case, has the authority to bifurcate the trial if, in its
7 discretion, doing so is appropriate. It is generally within the discretion of the trial court
8 to decide whether to bifurcate a trial, and the decision is subject to review only for abuse
9 of discretion. *A.M. v. State*, 891 P.2d 815, 828 (Alaska 1995). Therefore, North Star's
10 assertion that "Alaska law in effect at the time when conduct giving rise to punitive
11 damages occurred did not provide for a bifurcated trial" is erroneous. Admittedly,
12 Alaska Civil Pattern Jury Instruction 20.20 does not expressly provide for bifurcating a
13 trial to determine liability and amount of punitive damages separately (as does current
14 Alaska Civ. Pattern Jury Instruction 20.20A). However, there is nothing to prohibit the
15 court from bifurcating the trial to allow the jury to determine liability for punitive damages
16 separately from the amount of the punitive award.

17 North Star also contends that Nugget "misreads" *Pluid v. B.K.*, 948 P.2d 981
18 (Alaska 1997) as supporting the proposition that a jury may appropriately assess
19 punitive damages without having heard evidence of a defendant's financial condition.
20 North Star's Opposition at 4. Interesting, in the next sentence, North Star contradicts
21 itself by admitting that the court "held that it was proper to determine the amount of a
22 punitive damages award despite the fact that no evidence of a defendant's wealth was
23 admitted." *Id.* The point to be taken from *Pluid* is that for purposes of assessing
24 punitive damages, evidence of a party's financial condition, though relevant, is not

1 indispensable. It is of no prejudice to the party seeking punitive damages for the jury to
2 remain uninformed of the defendant's financial status while determining if that
3 defendant's conduct warrants a punitive award. Thus, if North Star insists that the issue
4 regarding the amount of punitive damages not be bifurcated, there is no prohibition to
5 simply disregarding the evidence entirely. Such action would be entirely appropriate in
6 this case, where it is of potentially great prejudice for the jury to hear evidence that may
7 cause it to perceive the defendant as a "deep pocket" before determining whether its
8 conduct met the standard for liability.

9 **III. CONCLUSION**

10 North Star agrees that evidence of Nugget's financial condition cannot be
11 considered to determine liability for punitive damages, while contending that such
12 evidence should be admitted not only to determine the amount of a punitive award, but
13 also for other purposes to which it may be relevant. In this case, the only issue to which
14 evidence of Nugget's financial condition may be relevant is the amount of punitive
15 damages, but only if Nugget is found to be liable for them. Until the jury has so
16 determined, the evidence is irrelevant and inadmissible. The court in this situation has
17 two logical alternatives: either (1) bifurcate the trial so that the jury would decide all
18 liability issues, including liability for punitive damages, and non-punitive damages in the
19 first phase and assess the amount of punitive damages in the second phase (during
20 which evidence of Nugget's finances could be introduced) if Nugget has been found
21 liable for punitive damages in the first phase or (2) exclude the evidence from a non-
22 bifurcated trial. Excluding the evidence from a non-bifurcated trial is the only way to
23 ensure that the jury decides the issue of punitive damages liability without improperly
24 considering Nugget's finances. Allowing the jury to hear the evidence in the second
25

1 phase of a bifurcated trial would ensure that it would be used only to decide the issue to
2 which it is relevant and would not taint the jury's decision making process with regard to
3 issues to which it is not relevant.

4 Dated: July 30, 2007

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Case No. A98-009 CIV (TMB)
Nugget's Reply in Support of Motion in Limine
Respecting Punitive Damages Claims -- Page 5 of 6

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of July, 2007, a true and correct copy of the foregoing was served electronically on:

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